

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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BROOKLYN BOTTLING OF MILTON,	:
NEW YORK, INC.,	:
Plaintiff,	: 07 CIV 08483 (AKH)
	:
	: REPLY
	:
-against-	:
	:
ECUABEVERAGE, CORP.	:
Defendant.	:
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Plaintiff, Brooklyn Bottling of Milton, New York, Inc., by and through its attorney, JEFFREY E. JACOBSON, a member of JACOBSON & COLFIN, P.C., hereby Replies to the Counterclaims of Defendant Ecuabeverage, Corp., entered on April 3, 2008 (Document #26) as follows:

ON THE FIRST COUNTERCLAIM

1. Admits the allegations contained in paragraph 1 of the first counterclaim.
2. Admits the allegations contained in paragraph 2 of the first counterclaim.
3. Admits the allegations contained in paragraph 3 of the first counterclaim.
4. Admits the allegations contained in paragraph 4 of the first counterclaim.
5. Admits the allegations contained in paragraph 5 of the first counterclaim.

6. Admits the allegations contained in paragraph 6 of the first counterclaim.

7. Denies the allegations contained in paragraph 7 of Defendant's First Counterclaim.

8. Denies knowledge sufficient to form a belief as to the allegations contained in paragraph 8 of Defendant's First Counterclaim.

9. Denies knowledge sufficient to form a belief as to the allegations contained in paragraph 9 of Defendant's First Counterclaim.

10. Denies the allegations contained in paragraph 10 of Defendant's First Counterclaim.

11. Denies knowledge sufficient to form a belief as to the allegations contained in paragraph 11 of Defendant's First Counterclaim.

12. Denies the allegations contained in paragraph 12 of Defendant's First Counterclaim.

13. Denies the allegations contained in paragraph 13 of Defendant's First Counterclaim.

ON THE SECOND COUNTERCLAIM

14. Admits the allegations contained in paragraph 14 of the first counterclaim.

15. Admits the allegations contained in paragraph 15 of Defendant's Second Counterclaim.

16. Admits the allegations contained in paragraph 16 of

Defendant's Second Counterclaim.

17. Admits the allegations contained in paragraph 17 of Defendant's Second Counterclaim.

18. Admits the allegations contained in paragraph 18 of Defendant's Second Counterclaim.

19. Admits that Defendant attached an exhibit to the Statement of Material Facts which purports to state the allegations contained in paragraph 19 of Defendant's Second Counterclaim.

20. Admits that Defendant attached an exhibit to the Statement of Material Facts which purports to state the allegations contained in paragraph 20 of Defendant's Second Counterclaim.

21. Admits the allegations contained in paragraph 21 of Defendant's Second Counterclaim.

22. Admits the allegations contained in paragraph 22 of Defendant's Second Counterclaim.

23. Admits the allegations contained in paragraph 23 of Defendant's Second Counterclaim.

24. Admits the allegations contained in paragraph 24 of Defendant's Second Counterclaim.

25. Admits the allegations contained in paragraph 25 of Defendant's Second Counterclaim.

26. Admits the allegations contained in paragraph 26 of Defendant's Second Counterclaim.

27. Admits the allegations contained in paragraph 27 of Defendant's Second Counterclaim.

28. Admits the allegations contained in paragraph 28 of

Defendant's Second Counterclaim.

29. Admits the allegations contained in paragraph 29 of Defendant's Second Counterclaim.

30. Admits the allegations contained in paragraph 30 of Defendant's Second Counterclaim.

31. Admits the allegations contained in paragraph 31 of Defendant's Second Counterclaim.

32. Admits the allegations contained in paragraph 32 of Defendant's Second Counterclaim.

33. Admits the allegations contained in paragraph 33 of Defendant's Second Counterclaim.

34. Admits the allegations contained in paragraph 34 of Defendant's Second Counterclaim.

35. Admits the allegations contained in paragraph 35 of Defendant's Second Counterclaim.

36. Admits the allegations contained in paragraph 36 of Defendant's Second Counterclaim.

37. Admits the allegations contained in paragraph 37 of Defendant's Second Counterclaim.

38. Admits the allegations contained in paragraph 38 of Defendant's Second Counterclaim.

39. Admits that for the sake of brevity and reference refers to a mark as the Tropical mark in paragraph 40 of Plaintiff's Amended Complaint.

40. Denies the allegations contained in paragraph 40 of Defendant's Second Counterclaim.

41. Denies knowledge sufficient to form a belief as to the allegations contained in paragraph 41 of Defendant's Second Counterclaim

42. Denies knowledge sufficient to form a belief as to the allegations contained in paragraph 42 of Defendant's Second Counterclaim.

43. Denies the allegations contained in paragraph 43 of Defendant's Second Counterclaim.

44. Denies knowledge sufficient to form a belief as to the allegations contained in paragraph 44 of Defendant's Second Counterclaim.

45. Denies the allegations contained in paragraph 45 of Defendant's Second Counterclaim.

ON THE THIRD COUNTERCLAIM

46. Admits the allegations contained in paragraph 46 of Defendant's Third Counterclaim.

47. Admits the allegations contained in paragraph 47 of Defendant's Third Counterclaim.

48. Admits the allegations contained in paragraph 48 of Defendant's Third Counterclaim.

49. Admits the allegations contained in paragraph 49 of Defendant's Third Counterclaim.

50. Admits the allegations contained in paragraph 50 of Defendant's Third Counterclaim.

51. Admits the allegations contained in paragraph 51 of

Defendant's Third Counterclaim.

52. Admits the allegations contained in paragraph 52 of Defendant's Third Counterclaim.

53. Admits the allegations contained in paragraph 53 of Defendant's Third Counterclaim.

54. Admits the allegations contained in paragraph 54 of Defendant's Third Counterclaim.

55. Admits the allegations contained in paragraph 55 of Defendant's Third Counterclaim.

56. Admits the allegations contained in paragraph 56 of Defendant's Third Counterclaim.

57. Admits the allegations contained in paragraph 57 of Defendant's Third Counterclaim.

58. Admits that the U.S. Patent and Trademark Office registered Plaintiff's mark without requiring Plaintiff to disclaim the exclusive right to use the word Tropical solely with regard to the application for the two word trademark TROPICAL FANTASY.

59. Denies the allegations contained in paragraph 59 of Defendant's Third Counterclaim.

ON THE FOURTH COUNTERCLAIM

60. Denies knowledge sufficient to form a belief as to the allegations contained in paragraph 60 of Defendant's Fourth Counterclaim.

61. Denies knowledge sufficient to form a belief as to the allegations contained in paragraph 61 of Defendant's Fourth

Counterclaim.

62. Admits the allegations contained in paragraph 62 of Defendant's Fourth Counterclaim.

63. Admits the allegations contained in paragraph 63 of Defendant's Fourth Counterclaim.

64. Denies knowledge sufficient to form a belief as to the allegations contained in paragraph 64 of Defendant's Fourth Counterclaim, especially since Counsel cannot read the Spanish language in which the exhibit is presented.

65. Denies the allegations contained in paragraph 65 of Defendant's Fourth Counterclaim especially since Counsel cannot read the Spanish language in which the exhibit is presented.

66. Denies knowledge sufficient to form a belief as to the allegations contained in paragraph 66 of Defendant's Fourth Counterclaim especially since Counsel cannot read the Spanish language in which the exhibit is presented..

67. Denies the allegations contained in paragraph 67 of Defendant's Fourth Counterclaim especially since Counsel cannot read the Spanish language in which the exhibit is presented..

68. Denies the allegations contained in paragraph 68 of Defendant's Fourth Counterclaim.

69. Denies the allegations contained in paragraph 69 of Defendant's Fourth Counterclaim.

70. Denies knowledge sufficient to form a belief as to the allegations contained in paragraph 70 of Defendant's Fourth Counterclaim.

71. Denies the allegations contained in paragraph 71 of Defendant's Fourth Counterclaim.

72. Denies the allegations contained in paragraph 72 of Defendant's Fourth Counterclaim.

ON THE FIFTH COUNTERCLAIM

73. Denies knowledge sufficient to form a belief as to the allegations contained in paragraph 73 of Defendant's Fifth Counterclaim.

74. Denies knowledge sufficient to form a belief as to the allegations contained in paragraph 74 of Defendant's Fifth Counterclaim.

75. Denies knowledge sufficient to form a belief as to the allegations contained in paragraph 75 of Defendant's Fifth Counterclaim.

76. Repeats and realleges its replies to paragraphs 62 through 71 of Defendant's Fifth Counterclaim as if fully set forth herein.

77. Denies the allegations contained in paragraph 77 of Defendant's Fifth Counterclaim

AFFIRMATIVE DEFENSES

1. Defendant Fails to State a Cause of Action upon which relief can be granted.

2. Plaintiff makes no claim for the exclusive right to use the Word TROPICAL.

WHEREFORE, plaintiff respectfully prays that the relief sought in the Amended Complaint be granted, that Defendant's Counterclaims be dismissed, and for such other and further relief as to this Court may seem just and proper in the circumstances.

DATED: April 22, 2008
New York, N.Y.

/Jeffrey E. Jacobson/
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